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# **GUIDE TO DISABILITY RETIREMENT FOR PUBLIC EMPLOYEES**

*Division of  
Public Employee Retirement Administration  
John J. McGlynn, Commissioner*



*Published by the  
Office of the Massachusetts Secretary of State  
Michael J. Connolly, Secretary*

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**GUIDE TO**  
**DISABILITY**  
**RETIREMENT**  
**FOR**  
**PUBLIC**  
**EMPLOYEES**

*Prepared by the*  
*Division of Public Employee Retirement Administration*  
*John J. McGlynn, Commissioner*

This guide is designed to familiarize you with procedures applicable to disability retirement of public employees who are members of Massachusetts contributory retirement systems. The contents do not affect the contractual rights between a system and its members and, in the case of any conflict, Chapter 32 of the Massachusetts General Laws and the regulations promulgated by the Division of Public Employee Retirement Administration (PERA) shall govern. This guide reflects changes and amendments to the law through the 1987 session of the Massachusetts General Court.

For procedures applicable to public employee retirement generally, members should refer to PERA's *Massachusetts Public Employee Retirement Guide* and PERA's *Guide to Survivor Benefits for Public Employees*.

All three guides may be purchased from the State Bookstore, Room 116, the State House, Boston, Massachusetts. Many contributory retirement systems also make them available to their membership.

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July, 1989

Dear Friends and Members of the Commonwealth's Public Employee Retirement Systems:

On behalf of the citizens of the Commonwealth and its political subdivisions, I want to thank you for your dedication and commitment to public service. Your high standards of performance in the day to day functioning of government at all levels in Massachusetts is an essential ingredient in maintaining the quality of life which makes our Commonwealth the envy of the 50 states.

Your retirement plan is a substantial element in the compensation we provide you. To assist you in understanding your retirement plan and the provisions of the law governing Massachusetts contributory retirement systems for public employees, the Division of Public Employee Retirement Administration has prepared this guide.

The benefits you receive from the public employee pension system will play a large role in your future financial plans. For many members, their retirement benefit is a very significant asset. The success and enjoyment you have in retirement may depend, in part, on the effort, knowledge, and judgment you apply in planning your retirement.

This handbook contains summary information on your retirement system, current through all legislative changes as of the end of the 1987 session of the Massachusetts General Court.

Your retirement system and the Division of Public Employee Retirement Administration are available to provide the service and information you need. Do not hesitate to call upon them to ensure that you receive your full retirement benefits.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael S. Dukakis".

Michael S. Dukakis  
Governor



# Table of Contents

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1/ACCIDENTAL DISABILITY: ELIGIBILITY	1
Notice of Injury Requirement	1
Heart Law	2
Lung Law	2
2/ORDINARY DISABILITY: ELIGIBILITY	3
Non Veterans	3
Veterans	3
3/INVOLUNTARY RETIREMENT	4
4/HEALTH AND FITNESS STANDARDS	5
5/DISABILITY APPLICATION	5
6/STANDARD TO BE APPLIED	7
Group 3 Members	8
7/MEDICAL PANEL EXAMINATIONS	8
Separate Single Examinations	9
Basis of Evaluation	9
Scheduling/Rescheduling	9
Representation	10
Findings	10
8/REHABILITATION	12
9/EFFECTIVITY OF ALLOWANCES	14
Accidental Disability	14
Ordinary Disability	14
Effect of Refunds on Eligibility	14
10/DISABILITY RETIREMENT BENEFITS	15
\$30,000 Cap	15
Accidental Disability Allowances	15
Additional Pension for Children	16
Limitation on Benefits	16
Workers' Compensation Offset/Accidental Disability	17
55/65 Adjustment	17
Ordinary Disability Allowances	18
Non-Veterans	18
Veterans	18
Group 3 Veterans and Non Veterans	18
Workers Compensation Offset/Ordinary Disability	19

*Table of Contents, continued*

11/OPTIONS	19
Option A	20
Option B	20
Option C	20
12/ACCIDENTAL DEATH BENEFIT	21
Death Related to Accidental Disability	22
Death Unrelated to Accidental Disability	22
13/ANNUAL STATEMENT OF EARNINGS	23
14/ANNUAL ADJUSTMENT FOR OTHER INCOME	24
15/MEDICAL RE-EXAMINATIONS	25
Retirement Board Desk Reviews	25
Re-examination Process	25
Reinstatement Status	26
16/RESTORATION TO ACTIVE SERVICE	28
17/MODIFICATION OF ALLOWANCE	29
18/THIRD PARTY RECOVERY	31
19/APPEALS	32



There are two types of disability for which public employees may be retired: accidental and ordinary.

# 1

## Accidental Disability: Eligibility

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*1/ Who is eligible to receive an accidental disability retirement allowance?*

Any member is eligible who becomes permanently and totally incapacitated for further duty as a result of a personal injury sustained or a hazard undergone while in the performance of his or her duties.

*2/ Does a member applying for accidental disability retirement have to meet any minimum service or age requirements?*

No.

*3/ Can I retire for accidental disability within two years of the maximum age for my group?*

Not unless the accident or hazard upon which you base your application occurs within three years of the maximum age for your group.

For the purpose of disability retirement, maximum age for Group 2 and Group 4 members is the last day of the month in which they attain age 65, for a Group 3 member age 55, and for a Group 1 member age 70.

*4/ When must I be a member-in-service?*

A public employee applying for an accidental disability allowance need not be a member-in-service at the time of application; member-in-service status is required only at time of injury.

### **NOTICE OF INJURY REQUIREMENT**

*5/ Should I notify my retirement board if I am injured on the job?*

If you are injured or exposed to a health hazard on the job, you should notify both your employer and your retirement

board immediately. This establishes the time, place, and occurrence of the accident for future reference.

An application for accidental disability filed more than two years after the injury or hazard occurred will be denied unless a notice was filed with the retirement board within 90 days or if there are records of workers compensation payments for the same injury or, if you are not covered by workers compensation, if there is a record on file in the official records of your department.

## **HEART LAW**

### *1/ What is the Heart Law and to whom does it apply?*

Under a special provision of state law, disability caused by heart disease or hypertension is presumed to be suffered in the line of duty for any employee who is: a uniformed member of a paid fire department or permanent member of a police department, or of the police force of the M.D.C., or the police of the M.B.T.A., or the state police in the department of public safety, or of the capitol police, or the registry of motor vehicles in the department of public works who entered the service of the registry as an investigator or examiner and performed police duty, or any employee in the department of correction whose regular or incidental duties require the care, supervision, or custody of prisoners, criminally insane persons or defective delinquents, or any permanent crash crewmen, crash boatmen, fire controllmen employed at the General Edwards Lawrence Logan International Airport, and who successfully passed a physical exam on or after date of hire.

The retirement board is required to presume that the heart disease or hypertension was caused by the job, unless risk factors such as smoking, obesity or family history or other non-service connected accidents or hazards constitute competent evidence to the contrary.

## **LUNG LAW**

### *2/ What is the Lung Law and to whom does it apply?*

Any impairment of health which is caused by disease of the lungs or respiratory tract in firefighters shall be presumed to have been suffered in the line of duty as a result of the inhalation of noxious fumes or poisonous gas, unless a risk factor such as smoking or non-service connected accidents or hazards constitute competent evidence to the contrary.

## 2

## Ordinary Disability: Eligibility

---

*1/ Who is eligible to receive an ordinary disability retirement allowance?*

Any member is eligible who becomes permanently and totally incapacitated for further duty due to sickness or injury which is not job-related.

*2/ Are there any minimum service or age requirements?*

### ***NON VETERANS***

Members who are not veterans must be less than 55 years of age.

Service requirements vary. Applicants who file for retirement on or after January 12, 1988, from the State Retirement System, the Teachers Retirement System and any other system which accepts Section 31 of Chapter 697 of the Acts of 1987, must have completed at least ten years of creditable service. All other applicants must have achieved at least fifteen years of creditable service.

### ***VETERANS***

Members who are veterans must have achieved at least ten years of creditable service but may be any age less than the maximum age for their group.

# 3

## Involuntary Retirement

*1/ Does my department head have the right to file an application to retire me?*

Your department head may file an application to retire you for disability. The minimum creditable service and age requirements that apply to voluntary retirement apply also to involuntary retirement.

*2/ How does the process begin, and do I have any immediate recourse if I feel I shouldn't be retired?*

Your department head will file an application for your retirement with your retirement board and will send you a copy of the application. If you are a member-in-service of Group 1, Group 2, or Group 4 and have completed twenty or more years of creditable service, or have attained age 55 and have completed fifteen or more years of creditable service, you may request an initial hearing by the retirement board within fifteen days of receiving your copy of the application.

*3/ What is the next step? Will there be a medical examination and evaluation?*

If you are not entitled to an initial hearing or the board decides to proceed with the disability application after the initial hearing, the involuntary process will follow the same procedures, including a medical examination and evaluation, as the voluntary disability retirement process.

Any member involuntarily retired may appeal his/her case to the Contributory Retirement Appeal Board.

*4/ Is the involuntary retirement process different for Group 3 members?*

Yes, uniformed members of the State Police who have achieved at least twenty years of creditable service in the State Police Division before age 50 will be retired upon the state surgeon's medical examination and the written recommendation of the Rating Board if the Rating Board determines that the officer has become physically or mentally incapacitated for the performance of duty on a likely-to-be permanent basis. An officer so retired may appeal his/her case to the Contributory Retirement Appeal Board.

# 4

## Health and Fitness Standards

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Chapter 697 of the Acts of 1988 directs the State Personnel Administrator to establish initial and in-service health and physical fitness standards for police officers and firefighters.

These standards are applicable to police officers and firefighters appointed after January 1, 1988 working in cities and towns which accept the applicable provisions of Chapter 697.

As of this writing the standards are being developed. Please contact the Commonwealth's Division of Personnel Administration for further information about the standards and their implementation.

*1/ Is a police officer or firefighter considered disabled if he/she fails to pass such an in-service examination?*

No, failure to pass does not create a presumption of disability for pension purposes.

# 5

## Disability Application

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*1/ What form should I use to apply for disability retirement?*

Whether you are applying for accidental or ordinary disability you should file your application on PERA Form 10-1 with your retirement board and with your employer. Unless authorized by your retirement board, you may file no more than one application for disability retirement for the same condition or injury within any twelve month period.

*2/ What date may I select for my retirement to become effective?*

You may select any date which is no less than fifteen days nor more than four months after the filing of your application and no later than the date on which you will reach the maximum age for your group classification.

*3/ What else must I file along with my application on PERA Form 10-1?*

In order to complete your application, you must also file with your retirement board the following:

■ PERA Form 10(6)3

A written statement authorizing release of information by the federal Internal Revenue Service and the Department of Revenue relative to your annual gross earned income.

■ PERA Form 10-2

A certificate from a medical doctor certified in Massachusetts stating the nature of your incapacity.

■ PERA Form 10-3

(For accidental disability only). A sworn statement of circumstances of the event or hazard undergone from which the injury claimed was sustained and upon which your disability retirement allowance is claimed.

■ PERA Form 10-4

A statement of your employment duties and the specific duties which you are now unable to perform as a result of the disability claimed.

■ PERA Form 10-5

A statement of your education and training, employment history and off-duty physical activities.

■ PERA Form 10-6-(1) & 10-6-(2)

(or such other form as may be required by a person, institution, or agency having custody of records)

■ Authorization for release of medical and insurance records as follows:

A. records of your personal physicians and of the physician submitting the certificate on Form 10-2.



B. records of all physicians or medical institutions which examined or treated you for the condition or personal injury upon which your application is based.

C. records of all physical examinations performed within the five-year period prior to your application or, if none are available for that period, the most recent.

D. your workers' compensation records (if any).

E. your hospitalization insurance records for the last five years.

F. the accident or claim reports for the last five years of any insurer in connection with your personal injury sustained or the hazard undergone upon which your application is based.

- Authorizations permitting all physicians and medical institutions which examined or treated you for the condition or injury upon which your application is based to further explain records, treatments, or prognoses.

All of the preceding PERA forms must be obtained from and filed with your retirement board before your application for a disability retirement will be considered.

Upon receipt of your disability retirement application, the retirement board will request information from your employer and your department head about your education and training, duties and responsibilities, civil service status, and any medical reports in your file.

## 6

### Standard to be Applied

#### 1/ *What standard determines whether I am disabled?*

To be considered disabled, your retirement board must find that you are substantially incapable of performing your particular job, any similar job, or any other job for which your training and qualifications are suitable. Your board must also find that your incapacitation is likely to be permanent.

If you are applying for an accidental disability retirement, the board must also find that it is the natural and proximate result of sustaining an injury or undergoing a hazard while performing your duties at a definite time and place without willful and serious misconduct on your part.

## **GROUP 3 MEMBERS**

*2/ Are there special accidental disability provisions applicable to uniformed members of the State Police?*

Uniformed members of the State Police who sustain an injury or who undergo a hazard, while in the performance of their job duties, which proves to be permanently and totally incapacitating will be retired upon the state surgeon's medical examination, and the written recommendation of the Rating Board. The Rating Board consists of three members: the State Surgeon, the Commissioner of Public Health, and the Commissioner of Public Safety, or their designated subordinates.

# 7

## **Medical Panel Examinations**

*1/ How is a medical panel appointed to examine me?*

When your retirement board determines that your application for accidental or disability retirement is complete, the board (which meets at least once each month) will petition the Commissioner of the Public Employee Retirement Administration (PERA) to appoint a three member, state-financed, independent regional medical panel to examine you.

No personal physician who has already examined or treated you can be appointed to a panel to examine you.

*2/ May physicians who are associated with each other serve together on a medical panel?*

PERA will not appoint physicians who are economically associated to serve with each other on a medical panel.

PERA does not consider physicians who provide services through a disability review organization to be associated unless they have a direct and substantial financial interest in the profit and loss of the organization.



## **SEPARATE SINGLE EXAMINATIONS**

*3/ Do the three physicians appointed to my medical panel have to conduct a joint examination?*

You have the right to request three separate single physician examinations when you file your disability application. Such separate examinations can be scheduled by PERA to take place on three separate days in three separate locations. If you do not request separate single examinations at application filing time, PERA will generally schedule a joint examination. In instances where assembling a joint examination would be inordinately time consuming PERA may schedule separate single examinations instead.

You may request separate examinations at any time prior to a joint examination date but PERA will not ordinarily consider requests for separate examinations less than 48 hours prior to a scheduled joint examination. If you do request separate examinations after PERA has scheduled a joint examination, PERA will ordinarily reschedule the examination to be conducted separately by the same physicians. Occasionally, however, to expedite the process, other physicians may be substituted.

If the members of a joint panel do not meet to examine you within sixty days of the date PERA schedules a joint examination, PERA will reschedule the same physicians to conduct three separate examinations.

*4/ If I undergo three separate examinations, will the examining physicians each write his/her own report?*

Yes.

## **BASIS OF EVALUATION**

*5/ What is the basis of the medical panel's evaluation?*

A majority of the physicians on the medical panel must certify that you are mentally or physically incapacitated for further duty and that such incapacity is likely to be permanent. In the case of an accidental disability retirement, the panel must state further whether or not the disability might be the natural and proximate result of the accident or hazard undergone, on account of which retirement is claimed.

## **SCHEDULING/RESCHEDULING**

*6/ Who handles the scheduling of medical panel examinations?*

PERA will schedule the medical panel examination(s) and notify you at least 14 days in advance of the date(s), time(s), and location(s).

*7/Under what circumstances may I request that a medical panel examination be rescheduled?*

You may request that an examination be rescheduled only for compelling personal reasons including, for example, a death in the family or your own hospitalization. In the event you are unable to attend an exam that has been scheduled, you should notify PERA immediately.

If you fail to attend an examination without having been granted a request for rescheduling, your application may be denied and you may have to reimburse the Commonwealth for the cost of the original examination before a new examination will be scheduled.

If the application is for involuntary retirement, the employer may be held responsible for reimbursement to the Commonwealth if the employee fails to appear at a scheduled examination.

## ***REPRESENTATION***

*8/May my own doctor and attorney attend the exam(s)?*

Yes, but it is your responsibility to notify them of the date(s), time(s), and location(s) of the examination(s). In addition, your employer may also have legal counsel and a physician attend your examination(s).

Your representative(s) and your employer's representative(s) may answer questions from the panel but they will have no vote in the final determination made by the panel.

If your physician is present at the examination(s), he/she may send his/her written opinion regarding your medical condition to your retirement board within 10 days.

PERA will pay your physician a fee at a state-established rate for each examination attended.

## ***FINDINGS***

*9/Does the medical panel have a time limit in which to complete its work?*

The medical panel has sixty days in which to submit its report to your retirement board through the Commissioner of PERA.

*10/When will the board inform me of the medical panel's findings?*

The board will notify you of the panel's findings within thirty days of its receipt of the medical panel report or in the case of separate examinations, within thirty days of receipt of the last of three separate reports.

*11/ What happens to my application if the medical panel does find me to be disabled?*

Your retirement board will consider the report(s) of the medical panel and determine whether or not to approve your application. While the medical panel report is a very important element in the retirement board's consideration, it is only part of the information that must be reviewed by the board.

*12/ Will there be a hearing?*

The board may hold a hearing on any disability retirement application and will hold a hearing upon your request.

Retirement board hearings are conducted in accordance with 840 CMR 10:00 Standard Rules for Disability Retirement; Section 10.12. These regulations cover notice, discovery, conduct of the hearing, evidence, and subpoenas. Your retirement board or the Public Employee Retirement Administration will furnish you with a copy of the regulations on request.

*13/ What happens if both the medical panel and my retirement board find me to be disabled?*

The Commissioner of the Public Employee Retirement Administration will review your disability application. The Commissioner may return any application to the board for further action within thirty days of its receipt if he finds the board's decision to have been made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, or a result of fraud or misrepresentation.

When your application has been approved by the Commissioner, or if no action is taken by the Commissioner within thirty days, your retirement board will notify you that your application for disability retirement has been granted.

*14/ What happens to my application if the medical panel does NOT find me to be disabled?*

You have a right to request a hearing before your retirement board upon your notification about the findings of the medical panel.

Your retirement board may deny your application or, if it determines that an additional examination is warranted, it may petition the Commissioner of PERA to schedule a new examination.

The Commissioner will either schedule a new panel examination or decline to do so, in which case, the board will deny your application.

If your application is denied, you will be notified of your right to appeal the denial of your application to the Contributory Retirement Appeal Board.

Please see the section of this guide pertaining to Appeals and the Contributory Retirement Appeal Board.

*15/ Is there a time limit by which the retirement board must complete action on my disability application?*

Your retirement board has one hundred and eighty days from the filing of your application to make a final determination. If circumstances warrant, an extension may be granted by the Commissioner of PERA.

## 8

# Rehabilitation

*1/ When is a member retired for ordinary or accidental disability required to participate in a rehabilitation evaluation?*

After an in-house screening, upon the Commissioner's direction, an evaluation may be scheduled as soon as practicable following the date any member's retirement becomes effective.

In addition, the Commissioner may require any member retired for disability who is under age sixty or, in the case of a member who retired after reaching age sixty, who is under age sixty-five to participate in a rehabilitation evaluation at any time.

*2/ Who conducts the rehabilitation evaluation?*

Upon the decision of the Commissioner to conduct a rehabilitation evaluation, he selects a physician from a list of vendors he has approved to determine whether you would benefit from a medical or vocational rehabilitation program. Upon receipt of the physician's report, the Commissioner may proceed to appoint a vocational counselor to conduct a further evaluation.

You will receive at least fourteen days notice of the date, time and location of any scheduled evaluation. All pertinent medical and employment information will be forwarded to the rehabilitation personnel.

*3/ What happens if I refuse to participate?*

If you refuse to participate in a rehabilitation evaluation, your retirement allowance may be discontinued. If you continue to refuse for a year, your pension will be revoked.

*4/ What happens after I am evaluated for rehabilitation?*

The physician and/or counselor will forward an assessment report to the Commissioner. In it the writer(s) will state whether you are in need of or might benefit from rehabilitation and, if so, recommend and describe a suitable rehabilitation program.

*5/ What happens if the Commissioner determines that I don't need or wouldn't benefit from a rehabilitation program?*

The Commissioner will notify you and your board and the board will initiate proceedings to determine whether:  
your condition has so changed that you could return to the same or a similar position which is compatible with your training and qualifications,  
and/or whether your pension should be modified due to your actual or potential earning capacity.

*6/ What happens if the Commissioner determines that I would benefit from a rehabilitation program?*

You and your retirement board will be notified and a copy of the approved rehabilitation program will be forwarded to your board.

The board will notify you in writing of the Commissioner's approval and will offer the program to you. If you choose to participate in the program, the board will notify the commissioner within 14 days of your approval. PERA will assume all costs associated with your program.

*7/ What may be included in a rehabilitation program?*

A rehabilitation program may include medical examinations, vocational testing, physical and/or occupational therapy, and consultation with physicians and vocational counselors.

*8/ What happens after I complete a rehabilitation program?*

The Commissioner will report the results of your participation to your retirement board and your board must initiate proceedings to determine whether:  
your condition has so changed that you could return to the same or a similar position which is compatible with your training and qualifications,  
and/or whether your pension should be modified due to your actual or potential earning capacity.

*9/ Are disability retirees required to participate in a rehabilitation program?*

Participation in a rehabilitation program is not compulsory.



# 9

## Effectivity of Allowances

### ***ACCIDENTAL DISABILITY***

*1/ When will my accidental disability retirement allowance become effective?*

An accidental disability retirement allowance will become effective (for Group 1,2, and 4 members) on the date your injury was sustained or the hazard undergone which formed the medical basis for your retirement; or on the date 180 days prior to your filing a written application with your retirement board; or on the date you last received regular compensation from your employer, whichever date last occurs.

The accidental disability allowance of a Group 3 member will become effective on the date of his/her retirement.

### ***ORDINARY DISABILITY***

*2/ When will my ordinary disability retirement allowance become effective?*

An ordinary disability retirement allowance will become effective on the date of your retirement, a date which may not be less than fifteen days nor more than four months after the filing of your application and may not be later than the date on which you will reach the maximum age for your classification, nor earlier than the last day for which you received regular compensation.

### ***EFFECT OF REFUNDS ON ELIGIBILITY***

*3/ Is my receipt of a disability allowance affected by my withdrawal of accumulated deductions in the past?*

You are affected only if you return within two years to the service of the governmental unit from which you received your refund. Such members are ineligible to receive an accidental or ordinary disability allowance until they have repaid into the retirement system all accumulated regular deductions withdrawn by them plus annual interest to the date their retirement becomes effective.

## 10

# Disability Retirement Benefits

## **\$30,000 CAP**

*1/ Even though my deductions are based upon a percentage of my total annual regular compensation, does the law, for the purpose of calculating my accidental or ordinary disability retirement allowance, impose a salary limitation?*

If your membership commenced prior to January 1, 1979, you will not be subject to such a salary limitation.

If your membership commenced on or after January 1, 1979, the maximum regular compensation upon which your disability or superannuation retirement allowance can be calculated is \$30,000.00 unless you are a member of the State Retirement System, the Teachers Retirement System, or a member of a system whose board votes to accept the provisions of Chapter 697 of the Acts of 1987. For further information about the \$30,000 cap, please contact your retirement board or PERA. You may also want to review PERA's Massachusetts Public Employee Retirement Guide.

## **ACCIDENTAL DISABILITY: ALLOWANCES**

*1/ What makes up an accidental disability retirement allowance?*

An accidental disability allowance consists of two parts: an annuity and a pension. It is payable on the last day of each month.

*2/ How is my annuity calculated?*

Your annuity is based upon your total accumulated deductions, with related interest, and your age on the date of retirement.

*3/ How is my pension calculated?*

Your yearly pension is equal to 72% of the annual rate of regular compensation which you were earning on the date your injury was sustained or 72% of the average annual rate of regular compensation for the twelve month period for which you last received regular compensation, whichever is greater.

Please note that for purposes of retirement allowance calculation, your regular compensation may be capped. Please refer to Question 1 on page 15.

### ***Additional Pension for Children***

*4/ Is there an additional pension benefit to which I am entitled if my children are eligible?*

In systems which have not elected to accept the provisions of Section 33 of Chapter 697 of the Acts of 1987 you will receive a yearly amount of additional pension of \$312.00 for each of your surviving, unmarried children who are under the age of 18.

After July 1, 1988, if you are a member of the State Retirement Board, the Teachers Retirement Board or any other system electing to accept the provisions of Section 33 of Chapter 697 of the Acts of 1987, the yearly amount of additional pension you will receive on account of each of your surviving, unmarried children who are under the age of 18 is \$450.00. Beginning July 1, 1989 this amount will be increased by an amount equal to the percentage increase of the cost of living each year as determined by the General Court for retirement allowances, pensions and annuities.

*5/ How long will I continue to receive additional pension on account of my children?*

Payment continues as long as a child remains a full-time student at an accredited educational institution and is under 21 years of age. With one exception, no payment is made for a child who is already over the age of 18 at the time of your retirement whether or not the child is a full time student. Payments on account of children who are mentally or physically incapacitated from earning at the time of your retirement, will continue for the duration of the child's incapacity.

### ***Limitation on Benefits***

*6/ Is there a limitation on the retirement allowance payable to an accidental disability retiree?*

There is a limitation on the allowance of any such retiree, regardless of classification, who became a member-in-service after January 1, 1988.

The annual retirement allowance (the sum of pension and annuity, exclusive of payments made to eligible children) of such retirees cannot exceed 75% of the annual rate of regular compensation used to calculate the allowance.



*7/ I was a member-in-service on or before January 1, 1988. Is my accidental disability retirement allowance subject to this limitation?*

No, provided your member-in-service status has been continuous since that date. If your service has not been continuous since January 1, 1988 your allowance will be subject to the limitation.

### ***Workers' Compensation Offset/Accidental Disability***

*8/ Is my accidental disability retirement allowance affected by my receipt of Workers' Compensation payments?*

Payments you receive under Workers' Compensation based on the same disability (for which you retired) are offset against and therefore reduce the pension portion of your retirement allowance. They do not affect the annuity portion of your retirement allowance.

*9/ Am I required by law to file for the Workers' Compensation benefits to which I am entitled?*

If the injury for which you seek disability benefits is also covered by Workers' Compensation benefits, you must, as a condition to filing for disability retirement, also file for Workers' Compensation benefits. If you neglect to file, your retirement board will file on your behalf. Failure to cooperate with the board will result in suspension of your right to receive a disability retirement allowance.

### ***55/65 Adjustment***

*10/ Are accidental disability retirement allowances subject to adjustment at age sixty-five?*

An accidental disability allowance that becomes effective on or after January 12, 1988 will be adjusted at age sixty-five if the member was classified in Groups 1, 2, or 4, has fewer than ten years of creditable service at age sixty-five, and had reached age fifty-five when retired for accidental disability.

Such allowances will be adjusted, on the last day of the month in which the member attains age sixty-five, to what the member would have received had he/she retired for superannuation upon his/her sixty-fifth birthday.

*11/ Will I receive creditable service for the time during which I received an accidental disability allowance?*

The number of years and full months of creditable service corresponding to the period during which you received an ac-

cidental disability allowance will be added to the number of years and full months of creditable service which had accrued at the time of your accidental disability retirement.

## ***ORDINARY DISABILITY: ALLOWANCES***

### ***Non Veterans***

*1/How is an ordinary disability allowance for a non veteran calculated?*

An ordinary disability retirement allowance is calculated as though you were being retired for superannuation at age 55 with the amount of creditable service you have actually achieved.

*2/What benefits am I entitled to if I am 55 or older when I become totally disabled?*

Because an ordinary (non-veteran) disability retirement allowances is calculated as though you were age 55, you will receive no additional benefit. You may apply instead for the superannuation allowance to which you are entitled by reason of your actual age and creditable service.

### ***Veterans***

*3/How is a veteran's ordinary disability allowance calculated?*

A veteran retired for ordinary disability will receive an allowance consisting of an annuity based on accumulated deductions plus related interest and a pension equal to 50% of annual pay for the last year immediately preceding retirement for which he/she received regular compensation.

*4/Is there a special provision which applies to veterans who are 55 or older?*

The allowance of a veteran retired for ordinary disability after becoming age 55 will not be less than the allowance he/she would receive if retired for superannuation.

## ***Group 3 Veterans and Non Veterans***

*5/Are members of Group 3 eligible for ordinary disability retirement?*

The provisions governing Group 3 ordinary disability retirement are unique. Group 3 members should contact the State Board of Retirement for further information.

## *Workers' Compensation Offset/Ordinary Display*

*6/ Is my ordinary disability retirement allowance affected by my receipt of Workers' Compensation payments?*

Payments you receive under Workers' Compensation based on the same disability (for which you retired) offset and therefore reduce the pension portion of your retirement allowance. They do not affect the annuity portion of your retirement allowance. Workers' Compensation payments based on a different disability do not affect your retirement allowance.

# 11

## Options on Retirement

“Option” is the term used to describe how your retirement allowance is allotted. Your allowance must be paid to you in lifetime monthly payments, but the apportionment of those payments will differ depending upon your option selection. Option choice also determines what benefits, if any, will be paid to survivors after a retiree's death.

*1/ What factors should influence my choice of option?*

Your health and age at retirement, income from other sources, financial obligations, and the need to provide for others who may survive you are some of the factors. Your decision should not be made on the basis of what options are the most popular, or the one chosen by a friend or acquaintance. It should be based on your own personal needs.

*2/ When must I make my option selection?*

You must make a choice about your option on or before the date your retirement becomes effective. Retirement board staffers are available to thoroughly discuss options with you prior to that date.

*3/ May I change my option choice?*

You may not change your choice of option after your retirement becomes effective.

*4/ Are there any restrictions on my election of an option?*

Accidental disability retirees are limited to a choice of Option A or Option B. They may not elect Option C.

The ordinary disability retiree has no restrictions on his/her choice of options. He/she may choose either Option A, B, or Option C.

*5/ What are the retirement options?*

**OPTION A**

Election of Option A means that you will receive the full retirement allowance in monthly payments as long as you live. All payments will cease upon your death and no benefits will be provided to your survivors.

**OPTION B**

Option B provides you with a lifetime allowance which is 3% to 5% less per month than Option A. The annuity portion of your allowance is reduced to allow a benefit for your beneficiary. Upon your death, your surviving beneficiary(ies) of record, if any, or your estate will be paid the unexpended balance of your accumulated deductions from the annuity reserve account.

*1/ Who can I designate as my beneficiary? Can I change beneficiaries?*

Under Option B, you may designate any person(s) or charity or institution as your beneficiary. You may change your beneficiary at any time after retirement.

**OPTION C**

Remember, accidental disability retirees may not choose this option.

Option C is also known as the joint and last survivor allowance. Selecting this option means that the allowance which you will receive during your lifetime will be less than that which you would receive under Option A or Option B. Upon your death, your designated beneficiary will be paid an allowance for the remainder of his or her lifetime. That allowance will be equal to two-thirds of the allowance which was being paid to you at the time of your death.

*1/ What determines the monthly payments of an allowance payable under Option C?*

The monthly allowance you receive under Option C depends upon your life expectancy and the life expectancy of your designated beneficiary.

*2/ Who may I name as a beneficiary under Option C?*

You may name only one beneficiary under Option C. The eligible beneficiaries are limited to your spouse, your child, your parent, or your sibling.

*3/ May I change my Option C beneficiary?*

You may not change your beneficiary after you retire.

*4/ How does my allowance change under Option C if my beneficiary dies before I do?*

If your allowance became effective on or after January 12, 1988 and your beneficiary dies on or after that date and before you die, you will thereafter be paid the full retirement allowance you would have received had you elected Option A at the time your retirement allowance became effective. (This conversion is commonly referred to as the Option C “pop-up”.) Any cost-of-living increases granted since your Option C retirement became effective will be reflected in your newly established Option A allowance.

*5/ If I am predeceased by my Option C beneficiary after I retire, may I select Option B or select another beneficiary under Option C?*

No, reversion to Option A is automatic.

## 12

### Accidental Death Benefit

#### **DEATH RELATED TO ACCIDENTAL DISABILITY**

*1/ Will my beneficiary be eligible to receive an accidental death benefit if my death, after retirement, is directly related to my accidental disability?*

If you die after retirement from causes found by the retirement board to be directly related to your accidental disability,



your spouse may petition the retirement board for an accidental death benefit.

*2/ How is the amount of the death benefit determined?*

The accidental death benefit includes payment of any remaining accumulated deductions in one sum and continued payment of the pension portion of the allowance you were receiving at the time of your death, taking into account such factors as allowances for eligible children, cost-of-living raises, and any retroactive collective bargaining raises which you may have received after retirement.

*3/ Is the accidental death benefit affected by amounts received from Workers' Compensation?*

Amounts received under Workers' Compensation offset and therefore reduce the pension portion of the accidental death benefit. They do not affect the payment of remaining accumulated deductions.

*4/ Will pension payments be made to other members of my family if I leave no eligible spouse or eligible children?*

If you leave no eligible spouse, pension payments will be made to your eligible children and if there are no eligible children, pension payments will be made to your surviving, totally dependent father or mother. If your parents are deceased, or were not totally, financially dependent upon you, pension payments will be made to any totally, financially dependent unmarried or widowed sibling with whom you dwelt at the time of your death. Pension payments will continue as long as your beneficiary is unable to be self-supporting. Payments will cease upon your dependent sibling's marriage or remarriage.

*5/ After my death occurs, who would be eligible to receive the balance of my accumulated deductions?*

If you elected Option B upon retirement, your Option B beneficiary would receive only those accumulated deductions not already allotted as annuity payments to you.

***DEATH UNRELATED TO ACCIDENTAL DISABILITY***

*6/ What benefits are available to my family if my death, after retirement, is not related to my accidental disability?*

If you die after retirement from causes unrelated to your accidental disability, your spouse will receive an annual allowance of \$3,000 until your spouse remarries or dies.

*7/ Who is eligible to receive the balance of my accumulated deductions after my death?*

If you elected Option B upon retirement, your Option B beneficiary will receive only those accumulated deductions not already paid to you.

*8/ Are surviving spouses of other retirees also eligible to receive this benefit?*

The surviving spouses of ordinary disability retirees who retired before December 30, 1971 and who died after January 1, 1973 are also eligible. Prior to December 30, 1971, ordinary disability retirees were prevented by statute from electing Option C. This benefit is designed to enable those retirees to provide for a beneficiary.

# 13

## Annual Statement of Earnings

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*1/ What financial information must I file with my retirement board after my disability allowance becomes effective?*

You are required to file an annual statement (PERA Form 10-17) with your retirement board on or before April 15, certifying the full amount, if any, of your annual gross income earned during the preceding year.

Your retirement board will mail an annual statement form to you with the retirement allowance check mailed nearest to January first each year.

You must also file a federal W-2 Form, or a federal 1099 Form if self-employed, and a 4506 Form, which authorizes the retirement board to obtain copies of your tax return from the I.R.S. If you fail to file these forms, your retirement allowance may be suspended or revoked.

*2/ Can my retirement board request information about me from the Internal Revenue Service?*

Yes. At least every three years, your retirement board will send your Form 4506 to the Internal Revenue Service and request copies of part one of your federal income tax return, Schedule C if filed, any W2 forms and any 1099 forms.

# 14

## Annual Adjustment for Other Income

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*1/ Will my disability allowance be affected if my outside earnings exceed a certain level?*

If your post retirement actual earnings, when combined with your disability pension or retirement allowance, exceed the amount currently being paid for the position in the grade from which you retired plus \$5,000, you will be requested to refund the pension or portion thereof up to such excess.

This adjustment is made annually based on your actual earnings from the preceding year. However, the retirement board may also use this information to make a permanent modification of your pension.

*2/ How do I oppose a request for a refund?*

Initial notice of a retirement board's request for a refund will include the calculation upon which the request is based and will also inform you that you may, within fourteen days, file a written statement showing cause why the request should be reduced or withdrawn. The board will consider such statements and reach a determination within thirty days of the initial refund request.

*3/ What happens after the board makes a final request for a refund?*

The board will send you notice of the final request for a refund, and your retirement allowance will be withheld as security until the refund is made.

If you make the refund, any withheld payments will be released to you. If you fail to make the refund, payment of your disability allowance will resume only when the withheld amounts are sufficient to pay the amount of the refund requested.



# 15

## Medical Re-examinations

### **RETIREMENT BOARD DESK REVIEWS**

*1/ Are disability retirees required to be re-evaluated from time to time?*

At least once a year during the first five years following retirement, and every three years thereafter, the retirement board must review the file of each member (from Group 1, 2, and 4) retired for disability who is under the age of sixty, to determine whether:

- the member's actual or potential earnings may subject the member's retirement pension to modification, or
- the member may be physically able to return to the same or similar position, or
- the member may benefit from a rehabilitation program.

Your file will be subject to such review until your sixtieth birthday or, if your retirement becomes effective after your sixtieth birthday, until your sixty-fifth birthday.

Your retirement allowance (pension, annuity) will not be reduced during your lifetime if your actual and potential earnings and physical condition remain unchanged from the time of retirement.

Group 3 members retired for accidental disability are not subject to re-examination or restoration to active service.

### **RE-EXAMINATION PROCESS**

*2/ What happens if the retirement board determines that I should be re-examined?*

If the retirement board determines that you should be re-examined, it will also determine whether the re-examination will be conducted by a single physician or a three-member regional medical panel appointed by PERA. The Commonwealth will pay for all medical examination costs.

Your retirement board may require you to be examined as often as once each year for the first five years of disability, and

once every three years thereafter. You may also be re-examined upon your written request, but not more frequently than once in any twelve month period.

If your disability retirement became effective prior to your 60th birthday, your board cannot require you to be re-examined after age 60.

If your disability retirement became effective after your 60th birthday, you will be subject to re-examination until you reach the age of 65.

*3/ Is the re-examination process different if I live more than 500 miles from Boston?*

Your retirement board can petition PERA to appoint a single physician from the state where you currently live to conduct a preliminary examination.

If, as a result of the single physician examination, your retirement board determines that an exam by a three member regional medical panel is warranted, you must return to Massachusetts for the re-examination.

*4/ What happens if I refuse to be re-examined?*

If you refuse to be re-examined as required by your retirement board, your allowance may be discontinued. If you continue to refuse for a year, your allowance will be revoked.

*5/ What points will the doctors consider in conducting their re-examination?*

The doctors will evaluate three points:

- Are you engaged or able to engage in a gainful occupation?
- Has your mental or physical condition changed so that you could return to your former position or a similar job?
- Would you benefit from a rehabilitation program?

*6/ What will happen if the doctors determine my condition has improved?*

If the medical panel finds that your condition has improved, your board will notify you that restoration to active service and modification of your allowance is being considered. You have the right to request a hearing within fifteen days of notice or the board may hold a hearing on its own motion.

## **REINSTATEMENT STATUS**

*7/ If my retirement board determines that I am now capable of returning to my former Civil Service job, will I be automatically reinstated?*

Your retirement board will order you to be restored to active service in your same job or a similar position in the same governmental unit. If no vacancy exists, your retirement board and your employer must provide written notice to the Department of Personnel Administration. You will be placed on reinstatement status. The Department of Personnel Administration will ensure that you are restored to the first available suitable vacancy.\*

*8/If my retirement board determines that I am capable of returning to my former non-Civil Service position, will I be automatically reinstated?*

Your retirement board, with the approval of the head of any department in which a vacancy exists, may order you to be restored to active service in the same governmental unit by which you were employed. If no vacancy exists or a department head does not approve, you will be placed on reinstatement status.

*9/May I continue to receive a disability retirement allowance while I hold reinstatement status?*

If your retirement board orders you to be restored to active service, upon the basis of a medical panel report, and no suitable position is available, you will continue to receive your disability retirement allowance. Upon reinstatement, your allowance may be modified or suspended.

*10/Will my disability retirement allowance be decreased if I earn other income while I hold reinstatement status?*

As long as there is no job available to you, you will continue to retain reinstatement status. If you remain in this status for more than nine months, and the retirement board finds that you are gainfully employed, the board may adjust your retirement allowance. If the amount of your annual retirement allowance, when added to your other earnings, is in excess of the regular compensation you would have received, had you continued in service in the grade held on your retirement, your retirement board may reduce or suspend your retirement allowance. The reduction or suspension of benefits will correspond directly with the amount which is in excess.

*11/Are actual earnings the only basis upon which my pension can be modified?*

No, your pension may also be modified in light of your potential earning capacity.

*\*As of this writing, litigation is ongoing that may affect this interpretation. Please check with your retirement board or PERA for the current status of the legal proceedings.*

*12/ What action may the retirement board take if I refuse to be reinstated?*

If you refuse to accept an appropriate job, the retirement board may revoke or suspend your retirement allowance.

# 16

## Restoration to Active Service

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*1/ What if, upon a change in my condition, I am restored to active service at a salary which is less than what I was making when I retired but more than I received in disability payments?*

The yearly amount of your pension will be reduced accordingly. As long as your salary is supplemented by a retirement allowance, you will not assume member-in-service status and you will not make contributions to the retirement system.

*2/ What happens if I am restored to active service at a salary equal to or greater than the salary I was receiving before my disability allowance became effective?*

If your disability condition changes and you are restored to active service at a rate of compensation not less than the annual rate of your compensation at the time of retirement; or if you, after being restored to active service at a lesser rate, attain or exceed the annual rate of your regular compensation at the time of retirement, your retirement allowance will cease and you will again become a member-in-service and regular deductions will again be made from your regular compensation.

*3/ How will my restoration to active service affect my record of creditable service?*

Any creditable service in effect at the time of your retirement for disability will be restored to full force and effect. Upon your subsequent retirement, you will also receive creditable service for the period of your disability. No additional contributions will be required as a precondition for receiving such creditable service.

*4/ How will my restoration to active service affect my allowance when I later retire?*

Your retirement allowance will be calculated as though

your disability and subsequent reinstatement had never taken place. Your retirement allowance will be computed so that the pension portion is increased to offset the amount of annuity paid during your disability.

# 17

## Modification of Allowance

*1/ Will my allowance be affected if the retirement board finds I am engaged or able to engage in a gainful occupation?*

Your retirement allowance may be modified if the board finds you are engaged or able to engage in a gainful occupation as a result of:

- a medical panel re-examination report,
- earnings information that you must file annually with your retirement board,
- your completion of a rehabilitation program.

*2/ What does a retirement board consider in making determinations about potential earnings?*

Retirement boards are bound by regulations (pending as of this writing) promulgated by the Commissioner of PERA which pertain to retired members' functional capacity, age, education, and experience.

*3/ How soon may my board move to reduce my disability retirement allowance based on my potential earnings, assuming my mental and physical condition hasn't improved?*

No reduction based upon the potential earnings of a disabled retiree will become effective before the thirteenth month following the date the board decides to make this reduction or sooner than the nineteenth month following the effective date of retirement, whichever is later.

*4/ If my retirement board's determination to reduce my allowance is not based upon a medical re-examination, may I request an examination by a medical panel?*

You may file a request for examination within fifteen days of your board's initial finding about your potential earning



capacity. No reduction will be made until a medical report is received by your board and the board either confirms or alters its initial findings.

*5/ What formula is used to calculate a reduction in a disability retirement allowance based on actual or potential earnings?*

If your annual rate of actual or potential earnings is less than the regular compensation which would have been payable (including any increases in salary) during the preceding year had you continued in service in the grade you held when you retired but is more than the difference between your regular compensation and your retirement allowance, your pension will be reduced.

The amount of any reduced or modified pension will be the lesser of:

- a) The amount by which regular compensation exceeds the sum of the annuity portion of the retirement allowance and current actual or potential earnings; or
- b) The amount of the pension including any cost-of-living adjustments.

The following example illustrates the calculation:

Assume that regular compensation currently paid for the position from which you retired is \$25,000, your actual or potential earnings are \$15,000 and your retirement allowance (consisting of an annuity of \$4,500 and a pension of \$14,500) is \$19,000.

Your pension will be reduced because your actual or potential earnings (\$15,000) are less than regular compensation (\$25,000) and more than the difference between regular compensation and your retirement allowance (\$25,000-\$19,000 = \$6,000).

The amount of your reduced pension will be the lesser of:

- (a) Regular compensation less the sum of your annuity and your actual or potential earnings:

Regular compensation		\$25,000
Less:		
Annuity	\$ 4,500	
Actual or potential earnings	\$15,000	
	-	<u>\$19,500</u>
		\$ 5,500

or

- (b) Your current pension \$14,500

The amount of your retirement allowance after modification will be \$10,000 including your annuity (\$4,500) and your reduced pension (\$5,500).

If the result of the calculation in (a) is zero or negative, you will receive no pension and your retirement allowance will be limited to payment of your annuity.

*6/ What if my disability pension has been reduced or suspended and my actual or potential earnings later change?*

Your pension will be further modified by increasing, reducing, or suspending it as the case may be.

# 18

## Third Party Recovery

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*1/ Must recoveries be sought from “third parties” who cause disability or death to public employees?*

Members or their beneficiaries who are entitled to accidental disability or death benefits must exercise their right to recover lost wages from such third parties. Amounts recovered on account of lost wages are offset against the pension benefit and therefore reduce the pension portion of the retirement allowance.

*2/ What steps may a board take if a member or beneficiary fails to fully prosecute such rights?*

Boards may prosecute such rights on a member's behalf. If a member or beneficiary fails to cooperate, the board may, during the period of such failure, suspend a member's or beneficiary's rights to further payment.

# 19

## Appeals

The decisions rendered and actions taken by any of the 106 retirement boards or the Commissioner of the Public Employee Retirement Administration (PERA) are subject to review either by the Contributory Retirement Appeal Board (CRAB) or, in some circumstances, by the appropriate district court. If a retirement board or the Commissioner of PERA fails to act on a matter that it/he is required to act upon, this failure may also be appealed to CRAB.

### *1/ Who has the right to appeal to CRAB and when must an appeal be filed?*

Any person, who is aggrieved by a decision of a retirement board or the Commissioner of PERA or by the failure of a board or the Commissioner of PERA to take action, may appeal to CRAB. This appeal must be filed within 15 days of the date that the board or the Commissioner acted or was supposed to act. If no time is provided by law within which a board or the Commissioner is required to act, an appeal of a failure to act must be filed within 15 days after the end of one month following the date that a written request to act was filed with the board or the Commissioner.

### *2/ Who are the members of CRAB?*

The board consists of three members: an Assistant Attorney General, who acts as the chairman; the Commissioner of PERA or his designee; and a person appointed by the Governor. If the matter being considered by CRAB concerns a disability retirement, the Commissioner of Public Health or his designee substitutes for the Commissioner of PERA.

### *3/ How does the appeal process work and how long does it take?*

Within a period of not less than 10 days nor more than 60 days after the appeal is filed, CRAB must assign the matter to an administrative magistrate from the Division of Administrative Law Appeals. The administrative magistrate conducts the hearing and issues a recommended decision. CRAB must review the recommended decision and issue its promulgated decision within six months after the conclusion of the hearing. CRAB's final decision may be appealed to the superior court.



*4/ Is there another avenue of appeal available?*

If you are a member of Group 1, Group 2, or Group 4 who has attained age 55 and who has completed 15 or more years of creditable service, or if you haven't attained age 55 but have completed 20 or more years of creditable service, or if you are a veteran and have completed ten or more years of creditable service, you may petition the district court for review of certain decisions involving involuntary retirement or discharge.

*5/ If I am awaiting a decision about accidental disability, may I take a retirement allowance for which I am qualified?*

You may not accept an ordinary disability retirement but you may receive a superannuation retirement allowance (if otherwise eligible) pending a decision by CRAB on your disability retirement allowance. Your acceptance of a superannuation allowance will not prejudice your case for disability retirement.





# For Further Information

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## DIVISION OF PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

John W. McCormack Building  
Room 1101  
One Ashburton Place  
Boston, MA 02108  
727-9380

## CONTRIBUTORY RETIREMENT APPEAL BOARD

John W. McCormack Building  
Room 1101  
One Ashburton Place  
Boston, MA 02108  
727-9380

## MASSACHUSETTS DEPARTMENT OF REVENUE

Boston, MA 02204  
Attention: Tax Payers Assistance  
727-4545

## INTERNAL REVENUE SERVICE

TAX PAYER ASSISTANCE:  
1-800-424-1040

## SOCIAL SECURITY ADMINISTRATION

227-2400

## RETIREMENT BOARD:

Contact your personnel officer for the phone number and address  
of your retirement board.